

The office action also rejected Claims 1 - 7 under 35 U.S.C. 103 as obvious over the Edwards reference in view of the newly cited references.

For the reasons set forth in detail below it is respectfully submitted that the claims are patentable over the art of record when taken alone or in combination. Accordingly, it is respectfully submitted that the claims of this application are now allowable.

The present invention as set forth in independent Claim 1 features the optimal insulating facemask design. Most notable is the aspect of including the elastic fabric material to cover the forehead and gullet, and overall, form a 'vee-shape' in profile by way of mask's linearly tapering height to a minimum at the rear of the head where the straps co-join. This 'three-point' anchoring design of the mask applies pressure at points along the forehead, underside of the jawbone, and base of the skull, all being strategically selected points where the mask applies its greatest compression and the user has least sensitivity and pliable flesh. This achieves the great advantage of the most snug, comfortable, and hence optimal insulating fit, derived from the anchoring points' non-pliant nature so as to diminish typical masks' tendency to shift. To illustrate this concept, think of a women's bra.

These critical features allow the user to partake in more vigorous head movement activities without restriction or potential for mal-alignment, while also entirely eliminating pressure on the user's nose; having unobstructive co-joining distal ends to least interfere with long hair styles; and covering all exposed head skin areas with the least amount of material to eliminate material bulk and optimize portability.

The patent to Edwards is said to teach the present invention, when combined with Wilcox. We must respectfully disagree. As the Examiner properly concedes, the Edwards “reference” lacks structure at the forehead, and lacks snugly fitting structures around the eyes and ears. And although the Wilcox “reference” discloses a mask fitting snugly about the forehead, it suggests nothing more than draping non-elastic cloth over the ears and eye. This is far removed from the present invention in which snugly fits throughout its entire outer perimeters and minimizes the bounded material volume. It is seriously doubted that the Wilcox disclosure from 1908 offers any insight to achieving the present invention, since there is no disclosure whatsoever as to the details of how to use elastic material or to a comprehensive anchoring design.

Nevertheless, even if we assume for the sake of argument that Edwards is proper reference, it still does not teach a person skilled in the art the present invention. There is no teaching of selection to strategic anchoring points or of a system of elastic material in a ‘vee-shape’ design to achieve a maximally snug design - for the lower face or otherwise. However this functionality is the essence of the present invention. Thus Edwards is completely useless as a teaching of the present invention.

The Edwards reference teaches a facemask that, when used in combination with other clothing such as a hat, can achieve full head insulation. Edwards is the complete antithesis of the present invention and thus it represents a “teaching away” from the present development. Accordingly, the combination of Edwards and Wilcox also must teach away from the presently claimed invention. A “teaching away” by the prior art from the present invention is in fact a hallmark of non-obviousness.

As for the prior art made of record and not relied upon, Johnson is cited for its two sets of securing straps, and O'Brien is cited for its disclosure of eye, nose and mouth apertures. As accounted for above, when taken separately or together with the other references these disclosures do not suggest or teach the essence of the presently claimed invention.

The present invention's dependent Claims 3 – 4 further define other highly utilitarian inventive features that add to the overall 'insulating' objective of independent Claim 1. These claims are patentable for the reasons set forth above as well as for the additional recitations set forth therein. Accordingly, we believe that the claims are patentable over the prior art when taken alone or in combination.

The Examiner correctly observes that Edwards and Wilcox do not disclose methods to manufacture. And because these references do not disclose and do teach away from the present invention, *supra*, they are not a predicate to bar the remaining Claims 5 – 7 from patentability.

#### CONCLUSION

It is believed that these remarks clarify and distinguish the invention and place this case in condition for allowance, and notice to that effect is earnestly solicited. If, however, the Examiner finds this case not to be condition for allowance or has any questions regarding this matter, the Examiner is requested to telephone applicants attorney at the number listed below prior to issuing a further office action.

Dated: December 29, 2005

Respectfully Submitted,

By:



David J. DeToffol  
Reg. No. 39,167

DAVID J. DeTOFFOL, ESQ., P.C.  
305 Broadway – Suite 1101  
New York, NY 10007  
(212) 962-2220  
*Attorneys for Applicants*

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail, in an envelope addressed to: Commissioner of Patents, PO Box 1450, Alexandria VA 22313-1450.

Date: December 29, 2005

Reg. No.: 39,167

Signature:

